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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1022

STATE OF MAINE, LIBELLANT,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF.

FRANK I. COWAN,
NATHAN W. THOMPSON,
Counsel for Petitioner.

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Petition.

To the Honorable Justices of the Supreme Court of the United States:

The petition of the State of Maine for a Writ of Certiorari to be directed to the Circuit Court of Appeals for the First Circuit to bring before this Honorable Court the cause therein pending, viz., No. 3845, State of Maine, Libellant-Appellant *v.* United States of America, Respondent-Appellee.

I.

Statement of Matter Involved.

The State of Maine is the owner and operator of a drawbridge extending across the navigable waters of the Kennebec River between Bath, Maine and Woolwich, Maine.

The Coast Guard Tender ILEX is and during the times hereafter mentioned was a public vessel of the United States, used as a lighthouse tender along the Maine coast.

On or about the 17th day of August, 1939, the ILEX, then in the control of and operated by servants of the United States, struck and seriously damaged this bridge.

The State of Maine, as the owner of the bridge, filed a libel in admiralty to recover for this damage in the District Court of the United States, for the District of Maine, against the United States as owner of the ILEX, under the provisions of the *Public Vessels Act* of March 3, 1925, U. S. C., Title 46, Chapter 22, sec. 781 et seq., alleging that the damage was the result of the negligent operation of the ILEX by servants and employees of the United States that comprised her crew.

The United States of America appeared specially and filed a motion to dismiss the libel, on the ground that the damage being to a land structure rather than to a ship, the Admiralty Court was without jurisdiction. No evidence of any kind was offered by either party and the case was argued in the District Court on written briefs filed by the Proctors for the respective parties, following which the Court filed a written opinion sustaining the motion to dismiss on the ground that the "Public Vessels Act" did not give the Admiralty Court jurisdiction, as the damage was to a land structure. See written opinion filed by District Court (R. 6-9).

On appeal to the Circuit Court of Appeals for the First Circuit, the Court of Appeals, under the date of March 27,

1943, handed down a written opinion (R. 14-17) sustaining the findings of the District Court. From the findings and rulings of the Circuit Court of Appeals this petition is filed.

II

Jurisdiction.

The Petitioner admitted in the District Court and in the Circuit Court of Appeals that if the ILEX had been a privately owned vessel, the Admiralty Court would be without jurisdiction because the damage was to a bridge, a land structure, and the Petitioner depends solely on the provisions of the "Public Vessels Act" to give the Admiralty Court jurisdiction in this action.

III.

Question Presented.

The only question requiring the consideration of this Court is whether or not the District Court, as a Court of Admiralty, had jurisdiction of the proceedings in this case by virtue of the provisions of the "Public Vessels Act".

The particular section of the Act on which the Petitioner relies to sustain the jurisdiction of the Admiralty Court reads as follows:

> "*Section 781,* LIBEL IN ADMIRALTY AGAINST OR IMPLEADER OF UNITED STATES. A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, *for damages caused by a public vessel of the United States,* and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States; PROVIDED, That the cause of action arose after the 6th day of April, 1920. (Mar. 3, 1925, c. 428, sec. 1, 43 Stat. 1112.)" (Italics ours.) "Public Ves-

sels Act", United States Code, Title 46, Chapter 22, sec. 781.

The Petitioner took the position in the lower courts that the language of the Act is clear, and by its terms Congress intended to and did drop the shield of government immunity in cases where a public vessel of the United States damaged property of another, and gave the Admiralty Courts jurisdiction of any actions brought to recover for damages thus caused.

The Government argued that the language of the Act was ambiguous and in its briefs referred to the Senate Report and quoted from statements and letters made or written prior to and during the passage of the Act, which the Government attorneys claimed tended to show that it was the intention of Congress to give jurisdiction to the Admiralty Court in actions to recover for damage caused by a public vessel only in cases where the Admiralty Court would have had jurisdiction if the vessel had been privately owned. Although these statements and letters were not in evidence and for the first time appeared in the Respondent's brief, the District Court considered them and held that they showed that the true intent of Congress did not appear in the plain language of the Act. The Court then denied the jurisdiction of the Admiralty Court on the ground that it was not the intent of Congress to give jurisdiction to the Admiralty Court in actions brought to recover for damages caused by a public vessel, unless such court would have had jurisdiction of such action if the vessel that did the damage had been privately owned.

The Circuit Court of Appeals, in confirming the District Court, said:

> "By its *plain words* it (the Act) permits the bringing of a libel in personam in admiralty against the United States for damages caused by a public vessel of the

> United States. This is abundantly plain, but Congress did not see fit to define the scope of the word 'damages' or the scope of the phrase 'in admiralty'." Record, p. 16. (Italics ours.)

As the Court of Appeals said, Congress did not and we say it *intentionally did not* define the scope of the word "damages" and the reason it did not define the scope of the word "damages" is,—because it intended, as the clear languages shows, to include *all damages* caused by a public vessel.

It is because the District Court and the Circuit Court of Appeals have attempted to read into the Act something that is not there, that this petition is filed, with the hope that this Court will rule that under the terms of the "Public Vessels Act", the proper United States District Court, sitting as an Admiralty Court, has jurisdiction of any action brought to recover for damages caused by a public vessel of the United States.

Prayer.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari may issue directed to the United States Circuit Court of Appeals for the First Circuit commanding that court to certify and to send to this court a full and complete transcript of the record of all proceedings of said court in the above-entitled cause, to the end that said cause may be reviewed and determined by this court as provided by law.

And your petitioner will ever pray.

FRANK I. COWAN,
NATHAN W. THOMPSON,
Proctors for the State of Maine.

STATE OF MAINE,
Cumberland, ss: April 28, 1943.

We, Frank I. Cowan and Nathan W. Thompson, having been duly admitted to practice in the Supreme Court of the United States, as attorneys and counsellors of the Court, do hereby certify that the foregoing Petition for a Writ of Certiorari has been examined by us, and that, in our opinion, for the reasons therein set forth, the Writ ought to issue as prayed for.

FRANK I. COWAN,
NATHAN W. THOMPSON,
Proctors for the State of Maine.